

REMARKS/ARGUMENTS

Claims 2-8, and 12-21 are pending in the application as set forth in the Amendment E filed September 22, 2005.

In this amendment, Claims 3, 6, 8, 14, 17, 18 and 21 have been amended. Claim 2 is canceled without prejudice to filing a continuation with respect thereto. Claims 1 and 9-11 were previously canceled without prejudice to filing a continuation with respect thereto. Claim 22 has been added. Claims 4, 5, 7, 12, 13, 15, 16, and 19-20 remain unchanged.

As set forth below, the Claims as set forth above believed to be in condition for allowance. Reconsideration of the Application and issuance of a Notice of Allowability are respectfully requested.

Applicant appreciates that the rejection issued in the Final Office Action of January 11, 2006 has been withdrawn. However, in the current Office Action, the Examiner entered a new rejection rejecting the pending claims over the newly cited patents to Froesch (US Pat. No. 1731412), Clark (US Pat. No. 5470038), and Tornado (US Pat. No. 4720068). As discussed below, the claims as now presented are believed to distinguish over the newly cited references. Further, the claims as now presented are believed to remain distinguished over the references previously relied on by the Examiner. Should the Examiner feel that a rejection of the claims remains proper, either over the patents currently of record or of any newly cited

patents, the Examiner is urged to call Applicant's undersigned attorney for an interview.

I. Rejections under 35 U.S.C. §112

The Examiner rejected Claims 17 and 18 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter Applicant regards as the invention. In particular, the Examiner noted that "the frame" in Claims 17 and 18 was unclear. Claims 17 and 18 have been amended to replace "the frame" with "the play unit". The element "the play unit" finds antecedent basis in independent Claim 14, from which both Claims 17 and 18 depend. As now presented, Claims 17 and 18 are believed to comply with the requirements of §112. Withdrawal of this rejection is respectfully requested.

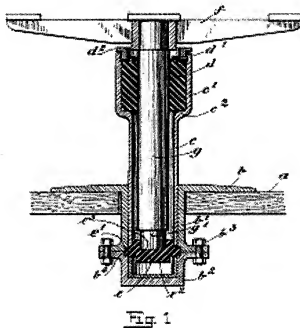
II. Rejections Under 35 U.S.C. §102

A. Froesch does not anticipate Claims 2, 6, 12 or 13.

In the present office action, Claims 2, 6, 12 and 13 been rejected under 35 U.S.C. §102(b) as being anticipated by Froesch (Pat. No. 1731412). In order for a reference to anticipate a claim, the reference must show each and every element set forth in the claim. Claim 2 is in independent form, and claims 6, 12 and 13 depend from Claim 2. Claim 2 has been canceled, and new Claim 22 has been entered in its stead. Claims 3-8, 12 and 13 have been amended to depend from Claim 22.

Froesch is directed to a yielding seat support for a chair, rather than playground equipment (Claims 22, 3-8 and 12-14) or play exercise equipment

(Claims 14-21). In particular, Froesch is directed to "seats which are supported yieldingly to cushion forces exerted upon the supporting surface by the weight carried by the seat. Figure 1 of Froesch is reproduced below.



As described in the Froesch patent, the support includes a plate (b) mounted in a floor (a). The plate (b) has a socket (b¹) which receives a sleeve (c). An annular rubber block (d) is received in the top of the sleeve and another rubber block (e) is mounted in the bottom of the sleeve. A pedestal (g) extends through the upper block (d) and rests on the lower block (e). A seat support (f) is mounted on the top of the pedestal (g). As set forth in Froesch, "downward movements of the seat are resisted by the block e, the force being transmitted to the socket b² through the annular flange e¹. Lateral movements of the seat are resisted by the annular block d at the top of the sleeve c."

In his rejection of Claim 1, the Examiner stated:

"Froesch discloses a device comprising a 'play unit' (f) adapted to be climbed on, at least one ground engaging post (c) to which the play unit is mounted, a connector (d) for mounting the play unit to the post, the play unit including a mounting shaft (g), the connector comprising a rubber bushing (d) which surrounds the play unit mounting shaft, the connector enabling the play unit to move with limited dampened swinging movement about an imaginary axis between opposite ends of the play unit."

New Claim 22 includes all the elements of Claim 2, but in a reorganized fashion. Claim 22 further provides that the play unit includes "a first end and a second end"; that the connector receives the play unit mounting shaft (which is at an end of the play unit); and that, when the play unit is mounted to the post by the connector, the play unit extends "outwardly from said at least one ground engaging post with said first end of said play unit being proximate said ground engaging post and the second end of said play unit being remote from said ground engaging post to which said first end is mounted". This construction of the playground assembly is shown, for example, FIG. 2 of the application, which is reproduced below.

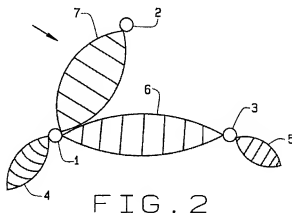


FIG. 2

As seen in FIG. 2 of the Application, the play units (4, 5, 6 and 7) extend outwardly from the ground engaging posts (1, 2 and 3) with at least one end of each play unit being proximate a ground engaging post and the other end being remote from the ground engaging post to which the first end is connected. Hence, for example, play unit 7, which extends between ground engaging posts 1 and 2 has one end mounted to the post 1, and thus proximate the post 1, while the other end of the play unit 7 is remote from the post 1. Because play unit 7 is mounted between two posts, its second end is mounted to, and proximate, the post 2 and the first end is remote from the post 2. Ground engaging units 4 and 5, on the other hand are connected to, and extend outwardly, from only one post – posts 1 and 3, respectively. With respect to play units 4 and 5, a first end is adjacent, and thus proximate, the post and the second end is remote from the post to which the first end is connected.

Claim 22 also provides that the connector comprises “means for enabling the play unit to move with a limited and dampened swinging movement around an imaginary axis between the opposite ends of the play unit” and that these means comprise the rubber bushing. The specification has been amended at page 4, as set forth above, to provide verbal support for the “means” clause of Claim 22 (and a similar clause which was inserted in Claim 14). It is apparent from the text of the paragraph that is amended, and the claims as originally filed that the “means for enabling the play unit to move with a limited and dampened swinging movement

around an imaginary axis between the opposite ends of the play unit" comprises the bushing. Hence, the amendment to the specification and to the claim does not add new matter to the application.

Initially, Applicant notes that Froesch discloses a support for a desk chair – it does not disclose playground equipment. Additionally, Applicant respectfully asserts that the chair support f or frame cannot be considered a "play unit". One does not play on the frame of a desk chair. Even if the Froesch chair support could be considered to be a playground assembly and that the chair frame could be considered to be a play unit, the "play unit" does not have a "mounting shaft" at an end of the play unit. Further, the "connector" does not receive a "mounting shaft" such that the play unit extends outwardly from the ground engaging post with a first end of the play unit proximate the post and the opposite end of the play unit remote from the post. Finally, Froesch does not disclose the means set forth in Claim 22.

According to the Examiner's construction of Froesch, seat support (f) corresponds to the "play unit"; the post (g) corresponds to the mounting shaft; the rubber block (d) corresponds to the connector; and the sleeve (c) corresponds to the ground engaging post. As can be seen, the "mounting shaft" is not at an end of the "play unit", but is located at the mid-point of the "play unit". The connector does not mount the "play unit" to the "ground engaging post" such that the "play unit" extends "outwardly from said at least one ground engaging post with said first end of said play unit being proximate said ground engaging post and the second end of said play

unit being remote from said ground engaging post to which said first end is mounted." Finally, the shaft g in Froesch can rotate about its axis. However, Froesch does not teach or suggest that the structure disclosed in the Froesch patent include "means for enabling the play unit to move with a limited and dampened swinging movement around an imaginary axis between the opposite ends of the play unit." Because Froesch does not disclose at least these noted elements of Claim 22, Froesch cannot anticipate Claim 22. Claims 6 and 12-13 depend from Claim 22 are hence are also not anticipated by Froesch.

With respect to Claims 12 and 13, the Examiner asserts that Froesch discloses that portions of the connector are mounted inside the post and outside the post. Claim 12 provides that "the connector is mounted within the post" and Claim 13 provides that "the connector is mounted to an outer surface of the post". Applicant respectfully asserts that, as interpreted by the Examiner, Froesch discloses neither of these constructions. The Examiner has stated that the ground engaging post is met by the sleeve c of Froesch; that the outer shell is met by the enlarged portion (c¹) of the sleeve, and that the rubber block (d) corresponds either to the bushing or the connector as a whole. Applicant notes that Claims 12 and 13 depend from Claim 6 which provides that the connector includes an outer shell and that the bushing is contained within the shell. If, as the Examiner contends, the enlarged portion c¹ of the sleeve corresponds to the shell of Claim 6, then the shell is not contained *within* the post, as required by Claim 12. Inasmuch as the enlarged

portion c¹ of the sleeve is an extension of the sleeve, this enlarged portion is not mounted to an outer surface of the post, as required by Claim 13. Hence, Claims 12 and 13 are not anticipated by Froesch independently of Claim 22.

At best, Froesch can be used to reject the Claims under 35 U.S.C. §103. However, as set forth below, Froesch is not analogous prior art and should be withdrawn as a reference against the application. Further, even if Froesch is retained as a reference, it does not make obvious the invention of Claim 22.

III. Froesch, Clark, Tomero and Engstrom are not analogous prior art.

In the present Office Action, the Examiner relies on Froesch, Clark (US 5470038), Tomero (US 4720068) and Engstrom (US 3656805). These are all newly cited references and all relate to chairs or chair supports. As set forth below, none of these patents can be considered to be analogous prior art, and the Examiner is requested to withdraw them from this application as prior art against the claims.

To rely on a reference under 35 U.S.C. §103, it must be analogous prior art. MPEP 2141.01(a). The newly cited patents to Froesch, Clark, Tomero and Engstrom are not analogous prior art. The MPEP at §2141.01(a) provides that:

"In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). See also *In re Deminski*, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986); *In re Clay*, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992) ("A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have

commended itself to an inventor's attention in considering his problem."); *Wang Laboratories Inc. v. Toshiba Corp.*, 993 F.2d 858, 26 USPQ2d 1767 (Fed. Cir. 1993); and *State Contracting & Eng'g Corp. v. Condotte America, Inc.*, 346 F.3d 1057, 1069, 68 USPQ2d 1481, 1490 (Fed. Cir. 2003) (where the general scope of a reference is outside the pertinent field of endeavor, the reference may be considered analogous art if subject matter disclosed therein is relevant to the particular problem with which the inventor is involved)."

Each of Froesch, Clark, Tornero and Engstrom fail both tests. As noted above, Froesch is directed to a seat support. Clark is directed to a self stabilizing seat support; Tornero is directed to a seat support column; and Engstrom is directed to a chair control and support. Hence, Froesch, Clark, Tornero and Engstrom are all related to chairs, such as desk chairs, while Applicant's invention is related to playground equipment, and in particular a connector for mounting a play unit of the playground equipment to a post of the playground equipment. Hence, none of these three parents are in Applicant's field of endeavor.

As noted in the MPEP, a reference can be analogous even if not in the same field of endeavor. However to be analogous, the reference must be reasonably pertinent because of the matter with which it deals, must logically have commended itself to an inventor's attention in considering his problem. However, in view of the fact that Froesch, Tornero and Engstrom all relate to desk chairs rather than playground equipment, Applicant respectfully asserts that they are so far removed from Applicant's field endeavor that these references would not have "commended [themselves] to an inventor's attention in considering his problem". *In re Clay*, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992). In particular, one trying

to develop a connector for a play unit to a ground engaging post which allows for the play unit to move with a limited and dampened swinging movement about an imaginary axis between opposite ends of the play unit would not consider art relating to desk chairs in trying to develop such a connector.

Thus, Froesch, Clark, Tornero and Engstrom (1) are not in Applicant's field of endeavor and (2) are not reasonably pertinent to the problem being solved by Applicant. Froesch, Clark, Tornero and Engstrom therefore are not analogous prior art, and Applicant therefore requests that these patents patent be withdrawn as references against the claims.

The conclusion that Froesch, Clark, Tornero and Engstrom are not analogous prior art is buoyed by the fact that they are classified in substantially different classifications than the present application. MPEP §2141.01(a).II. According to the Patent Office records, Froesch is currently classified in Class 248, Subclass 601; Clark is currently classified in class 248, subclass 156; Tornero is currently classified in class 248, subclass 161; and Engstrom is currently classified in class 297, subclass 303.5. These classifications are defined as noted below, with the relevant subclasses with the intermediary classes being listed.

Class 248 Supports
 560 RESILIENT SUPPORT
 580 load sustaining bearing or guide
 599 Resiliently supported leg or standard
 601 Encircles leg or standard
 (Froesch)

Class 248	Supports
127	STAND
156	Ground inserted (Clark)
158	Standard type
161	Adjustable vertically (Tornero)
Class 297	CHAIRS AND SEATS
285	BACK MOVEMENT RESILIENTLY OPPOSED IN OPERATING POSITION
303.1	Adjustable resistance
303.4	Coil spring
303.5	Coaxial adjustment member extends through coil (Engstrom)

The present application, however, is currently classified in class 482, subclass 023. Class 482 is entitled "exercise devices", and subclass 023 (which is a top level subclass) is entitled "gymnastic". Thus, the fact that the present application is classified as an exercise device in Class 482, while Froesch, Clark, Tornero and Engstrom are classified as "supports" in Class 248 or as "chairs and seats" in Class 297 adds support to the fact that these patents are not analogous prior art. MPEP §2141.01(a).II.

IV. Rejections Under 35 U.S.C. §103

A. Froesch Does Not Make Claims 22, 6, 12 Or 13 Obvious

Even if Froesch is retained as a reference, it does not make the claimed invention obvious. In particular, with respect to Claim 22 (from which Claims 2, 6, 12 and 13 depend) Froesch does not teach or suggest (1) a playground assembly; (2) a play unit adapted to be climbed upon and (3) which is mounted to a ground engaging post to extend outwardly from the ground engaging post with a first end of said play

unit being proximate the ground engaging post and a second end of the play unit being remote from the ground engaging post to which the first end is mounted; or (4) a connector that mounts that play unit to the post and which comprises "means for enabling the play unit to move with a limited and dampened swinging motion about an imaginary axis between opposite ends of the play unit." With respect to the third noted element, Froesch discloses that the pedestal or post g (which the Examiner asserts corresponds to the mounting shaft) extends from the middle of the seat support, rather than an end of the seat support and hence, when the post g is received in the sleeve c, the opposite ends of the seat support are all remote from the sleeve c. There is no end of the seat support which is proximate the sleeve c. With respect to the fourth noted element, Froesch discloses the use of rubber blocks at the top and bottom of the post g. As noted above, Froesch discloses that the rubber blocks resist downward movements of the seat and lateral movements of the seat. While the construction of the Froesch chair support may allow for the post g to rotate about a vertical axis (so that the chair can be turned), Froesch does not teach or suggest that the rubber blocks are means which will enable the "play unit to move with a limited and dampened swinging movement around an imaginary axis" between the opposite ends of the seat support, as required by Claim 22. In fact, a chair which would swing or wobble in such a way would be highly unstable, and hence would not be operable.

As alluded to above, Claim 22 provides that the connector receives the mounting shaft, which is at an end of the play unit. If the post g is considered to be the mounting shaft, as suggested by the Examiner, then the play unit cannot be mounted to the ground engaging post with a first end proximate the post and a second end remote from the post to which the first end is mounted. Rather, Froesch would teach only that the "play unit" be mounted to the top of the post with the opposite ends extending away from the post.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. MPEP §2142. Froesch fails on each of these three points.

Froesch does not suggest or motivate one of ordinary skill in the art to modify the reference. Modification of the Froesch seat support would require that the post (g) be moved to an end of the seat support (rather than being centrally positioned relative to the seat support) and that the seat be made to "move with a limited and dampened swinging movement". Applicant respectfully submits that if the Froesch

seat support were modified in such a manner, it would be inoperative. Thus, Applicant respectfully submits that there can be no expectation of success that the modification of Froesch will work. Lastly, as noted above, Froesch is missing several elements set forth in Claim 22.

For at least the foregoing reasons, Froesch does not make Claim 22 obvious. Claims 6, 12 and 13 all depend from Claim 22 and thus are not made obvious by Froesch. Additionally, with respect to Claims 12 and 13, Froesch (if interpreted consistently with the Examiner's description) does not teach or suggest a connector mounted within, or to an outer surface of, a ground engaging post, as set forth in Claims 12 and 13, respectively. Hence, for this additional reason, Froesch does not make obvious in subject matter of Claims 12 or 13.

B. Rejection over Froesch and Clark

Claims 3-5, 7, 14-19 and 21 were rejected under 35 U.S.C. §103 as being unpatentable over Froesch in view of Clark (US Pat. No. 5470038). Claims 3-5 and 7 depend from Claim 22 and further define the construction of the play unit (Claims 3 and 4), the construction of the connector (Claim 7). Claim 14 is an independent claim, and Claims 15-19 and 21 depend from Claim 14.

1. Froesch and Clark are not analogous prior art

As noted above, neither Froesch nor Clark are analogous prior art. Hence, Applicant again requests that these patents be withdrawn as references against the claims and that this rejection be withdrawn.

2. The Combination of Froesch and Clark do not make obvious the claimed invention

As with Froesch, in the Office Action, the Examiner asserts that the seat support of Clark corresponds to Applicant's play unit. As noted above in the discussion of Froesch, Applicant respectfully asserts that a seat (or more accurately, a seat support) is not a play unit. Further, even if the seat were considered to be a "play unit" the combination of Froesch and Clark would not result in Applicant's playground assembly. As discussed above, Froesch does not teach or suggest the invention of Claim 22. Clark is constructed similarly to Froesch, in that a seat frame is mounted on a post which, in turn, is received in a sleeve. Like Froesch, the post in Clark is centrally located relative to the seat frame. Unlike Froesch, the post in Clark is square, and hence, the Clark seat cannot rotate. Hence, the connection between the seat frame and the post does not allow for the seat frame to "move with a limited and dampened swinging movement", as does the connection between the post and play unit of the present invention as set forth in Claim 22. Hence, the combination of Froesch and Clark lack all the elements noted above in conjunction with Froesch. In particular, Froesch and Clark, even in combination, fail to teach or suggest (1) a play unit having a "mounting shaft at at least one of said first and second ends" of the play unit; (2) a connector which receives the mounting shaft to mount the play unit to a ground engaging post "such that said at least one play unit extends outwardly from said at least one ground engaging post with said first end of said play unit being proximate said ground engaging post and the second end of said play unit being

remote from said ground engaging post to which said first end is mounted"; and (3) that the connector comprise "means for enabling the play unit to move with a limited and dampened swinging movement around an imaginary axis between the opposite ends of the play unit."

In view of the fact that neither Froesch nor Clark teach or suggest the noted elements of Claim 22, Claim 22 is not made obvious by Froesch or Clark, whether considered individually or in combination. Claims 3-5 and 7 depend from Claim 22 are thus similarly not made obvious by the combination of Froesch and Clark.

Claim 14 is an independent Claim. Claim 14, as previously presented, provided that the play unit comprises "a pair of opposed side members, [and] a plurality of cross-members extending between the side members," in addition to "a mounting shaft extending from at least one end of the play unit". As discussed above, neither Froesch nor Clark provide a mounting shaft extending from an end of the play unit. As noted, to the extent that the posts to which the seat frames are mounted are "mounting shafts", these shafts are not at an end of the play unit, but rather are centrally located relative to the play unit. Further, neither Froesch nor Clark teach or suggest that the play unit comprise a pair of opposed side members and a plurality of cross-members extending between the side members. Because Froesch and Clark both lack at least these elements, Applicant respectfully submits that the Froesch and Clark, whether considered individually or in combination, do not teach or suggest all the claim limitations. MPEP §2142. Hence, Claim 14, as

previously presented is respectfully submitted to be allowable over Froesch and Clark.

Applicant, however, has further amended Claim 14 to provide (1) that "the play unit extends generally outwardly from the at least one ground engaging post to which it is mounted"; (2) that the first end of the play unit is adjacent the ground engaging post and the second end of the play unit is remote from the ground engaging post to which the first end is connected; and (3) that the connector comprises "means for enabling the play unit to move with a limited and dampened swinging movement about an imaginary axis between said first and second end of said play unit." Neither Froesch nor Clark teach or suggest that their seat frames are mounted in this manner or that the connector would allow the seat to move with a limited and dampened swinging movement. Rather, Froesch and Clark both teach that the seat frames are mounted to posts which extend down from a center of the seat frame. Hence, as discussed above in conjunction with Froesch, in the seat supports of both Froesch and Clark, the ends for the seat frames are all remote from the "ground engaging post". If either Froesch or Clark were modified such that an end of the seat frame was adjacent or proximate the "ground engaging post", the seat post would be at distal end of the seat frame, and the seat assembly would be inoperative for its intended use. Additionally, neither Froesch nor Clark teach or suggest that their respective "connectors" comprise means for enabling the seats "to move with a limited and dampened swinging movement" as set forth in Claim 14. In

fact, if either Froesch or Clark were modified to include this, the chairs would wobble and would not be useable for their intended purpose, namely, to be used as desk chairs. Hence, the proposed modifications to Froesch and Clark would render the chairs inoperable.

For at least these additional reasons, Claim 14 is not made obvious by Froesch or Clark, whether considered individually or in combination. Claims 15-19 and 21 all depend from Claim 14 are similarly asserted to be allowable over Froesch and Clark.

With respect to Claims 17 and 19, the Examiner asserts that Clark teaches a "play unit" comprising a bridge or ladder. Applicant respectfully disagrees. Clark discloses only a self-stabilizing seat support. In FIGS. 1, 2 and 2a, Clark shows a seat frame 17 which includes cross-members 19 which are used to attach a seat member 20. (See Clark, Col. 6, lines 35-43). There is nothing in Clark that can be construed to be a bridge or a ladder as those terms are commonly defined. Should the Examiner maintain the assertion that Clark discloses a bridge or ladder, Applicant respectfully requests that the Examiner explicitly point out which elements of Clark correspond to a bridge or a ladder. MPEP §706.02(j) ("the initial burden is on the examiner to provide some suggestion of the desirability of doing what the inventor has done;" and "It is important for an examiner to properly communicate the basis for a rejection so that the issues can be identified early and the applicant can be given fair opportunity to reply.").

With respect to Claims 8 and 21, the Examiner asserts that the use of multiple bushings is well known in the art. Applicant's multipart bushings are shown in FIG. 9, which is set forth below.

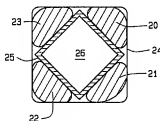


FIG. 9

As seen, Applicant's bushing comprises four discrete sections or elements, 20-23, which make up the bushing. Applicant has amended claims 8 and 21 to provide that the bushings comprise "*a plurality of*" discrete bushing elements spaced about said shell. This is seen, for example in FIG. 9, which is reproduced at left and does not add new matter to the application.

The Examiner asserts that such bushings are well known in the art and cites to US Pat. No. 3656805 to Engstrom in support of his assertion. Engstrom is directed to a chair control and support. As discussed above, Engstrom is non-analogous art, and Applicant thus requests that the Examiner remove Engstrom as a reference against this application.

Applicant further notes that, even if Engstrom were analogous prior art, it does not teach or suggest the use of a bushing comprised of discrete bushing elements, as set forth in Claims 8 and 21, which are part of a connector which allows for "a

limited and dampened swinging movement". Engstrom does disclose the use of a bushing 24, as shown in FIG. 6 of Engstrom, which is reproduced below.

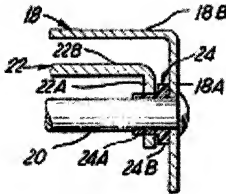


FIG. 6

As seen therein, and as described in Engstrom, the bushing 24 is journaled about the bolt 20 and is "employed to maintain the space relationship between the downturned side portions 18A of the bracket 18 and the downturned side portion 22A of the plate 22. The shank 24A of each of the bushings is tightly fitted into the aperture in the plate and the flange portion 24B of each bushing maintains the space relation between the bracket and the plate side portions and reduces frictional wear of the bracket as it moves about the defined pivotal axis."

Thus, the bushings used in Engstrom are one-piece bushings. Engstrom does not teach or suggest that the individual bushings be made from discrete elements, as is set forth in Claims 8 and 21. Applicant thus respectfully traverses the Examiner's assertion that bushings such as set forth in Claims 8 and 21 are old and well known in the art. Further, while the bushings of Engstrom allow for rotational

motion of the bolt 20 relative to the bushings, the Engstrom bushing 24 does not allow for "a limited and dampened swinging movement around an imaginary axis between the opposite ends of the play unit" as set forth in independent Claims 22 and 14. And, if Engstrom were modified such that the chair could wobble, the Engstrom chair would become inoperable for use as a desk chair.

Although the Examiner did not formally reject any of the claims over Engstrom, the combination of Engstrom with any of the other references of record will not teach the invention of Claims 8, 21 or any other presently pending claim.

3. Froesch And Tomero Do Not Make Claim 7 Obvious

The Examiner rejected Claim 7 under 35 U.S.C. §103 as being unpatentable over Froesch in view of Tomero (US 4720068). As discussed above, neither Froesch nor Tomero are analogous prior art, and Applicant requests that these patents be withdrawn as references against the application and that this rejection be withdrawn. However, even if the Examiner should retain Froesch and/or Tomero as references, neither Froesch nor Tomero, whether considered separately or in combination teach or suggest the invention of Claims 7.

Claim 7 depends from Claim 22 via Claim 6 and provides that the connector includes an inner tube which is received within the bushing, and that the inner tube receives the play unit mounting shaft. As discussed above, Froesch does not teach or suggest all the elements of Claim 22. The disclosure of Tomero does not add to the disclosure of Froesch to teach the missing elements from Claim 22. In particular,

Tornero lacks disclosure of at least the same elements that Froesch fails to teach. Thus, the combination of Froesch and Tornero do not teach or suggest the subject matter of Claim 22, and hence, do not teach or suggest the subject matter of Claim 7 which depends from Claim 22.

4. Froesch, Clark and Tornero Do Not Make Claim 20 Obvious

The Examiner rejected Claim 20 under 35 U.S.C. §103 as being obvious over Froesch in view of Clark and further in view of Tornero. Again, as noted above, Froesch, Clark and Tornero are not analogous prior art. Applicant thus requests that these references be removed from the application as prior art against the claimed invention and that this rejection be withdrawn.

Claim 20 depends from independent Claim 14 via Claim 19 and provides that the connector includes an inner tube which is received within the bushing, and that the inner tube receives the mounting shaft of the play unit. As discussed above in Section IV.B.2., above, the combination of Froesch and Clark do not make the invention of Claims 14 or 19 obvious. The teachings of Tornero do not add to the teachings of Froesch and Clark to supply the missing elements. In fact, Tornero lacks at least the same elements of Claim 14 that Froesch and Clark lack. Thus, the combination of Froesch, Clark and Tornero does not teach or suggest the subject matter of Claim 14, and hence do not teach or suggest the subject matter of Claim 19. Therefore, Claim 20 is believed to be allowable over Froesch, Clark and Tornero, whether considered individually or in combination.

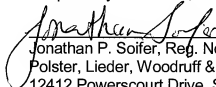
V. Conclusion

None of the references currently applied or currently of record in the application teach or suggest a playground assembly or play/exercise equipment comprising (1) a play unit; (2) at least one ground engaging post to which the play unit is mounted such that the play unit extends generally outwardly from the at least one ground engaging post to which it is mounted with a first end of the play unit being adjacent the at least one ground engaging post and the a second end of the play unit being remote from the ground engaging post the post to which said first end is adjacent; and (3) a connector to connect the play unit to the ground engaging post, wherein the connector comprises means for enabling the play unit to move with a limited and dampened swinging movement about an imaginary axis between the first and second ends of said play unit, and wherein the means comprises a rubber bushing which surrounds the play unit mounting shaft.

In view of the foregoing, Claims 22, 3-8 and 13-21 are believed to be in condition for allowance. A Notice of Allowability with respect to these claims is thus respectfully requested.

Dated: 1/11/07

Respectfully Submitted,


Jonathan P. Soifer, Reg. No. 34,932
Polster, Lieder, Woodruff & Lucchesi, L.C.
12412 Powerscourt Drive, Suite 200
St. Louis, Missouri 63131
Tel: (314) 238-2400
Fax: (314) 238-2401